

NORMAN M. REHG, SR.
NORMAN M. REHG, JR.
SUPERIOR OIL COMPANY

IBLA 73-140

Decided September 28, 1973

Appeal from an Arizona State Office, Bureau of Land Management, decision approving certain school lands for patenting to the State of Arizona.

Dismissed.

Patents of Public Lands: Effect

The Department of the Interior has no jurisdiction over lands to which patent has issued.

APPEARANCES: Robert E. Cattany, Esq., Tombstone, Arizona, for appellants, Norman M. Rehg, Sr., and Norman M. Rehg, Jr.; Leo N. Smith, Esq., of Verity & Smith, Tucson, Arizona, for appellant, Superior Oil Company.

OPINION BY MR. GOSS

Appellants 1/ have appealed from a decision dated September 1, 1972, by the Arizona State Office, Bureau of Land Management, accepting application, A 023929, filed by the State of Arizona, pursuant to 43 U.S.C. § 871a (1970), for the issuance of patent to certain described lands granted to the State by the Act of June 20, 1910, 36 Stat. 557, for the support of common schools. Patent 02-73-0024 was issued to the State for such lands on the same date.

1/ Norman M. Rehg, Sr., held the claims in question at the time when the State of Arizona originally filed its application for patent. Subsequently, Rehg, Sr., entered into an agreement with Superior Oil Company, effective July 19, 1971, whereby he granted to such company the right to explore, together with the option to purchase 48 unpatented lode mining claims, including those in issue herein. On May 30, 1972, Rehg, Sr., quitclaimed the same 48 claims to Norman M. Rehg, Jr.

The lands patented to the State are located in sec. 36, T. 15 S., R. 22 E., G.S.R.M., Arizona. The decision approved the application as to all the lands within section 36 except for certain patented and unpatented mining claims.

Appellants contend on appeal that such decision was erroneous to the extent that it approved lands for patent in section 36 which are included within other unpatented lode mining claims not listed in the decision.

Because patent has issued for the subject lands, this Department has no jurisdiction over them. Germania Iron Co. v. United States, 165 U.S. 379 (1897); Everett Elvin Tibbets, 61 I.D. 397 (1954). The question raised by appellants on appeal is, for our purposes, moot. For lack of jurisdiction this Board cannot entertain this appeal.

Appellants are not deprived of any vested rights in the patented lands because a patent cannot cut off such rights. People v. Dorr, 157 P.2d 859 (1945). Therefore, at appellants' discretion, they may seek a court determination as to their rights in the patented lands by virtue of their alleged ownership of unpatented mining claims thereon.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Joseph W. Goss
Member

We concur:

Anne Poindexter Lewis
Member

Martin Ritvo
Member

